

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,

Plaintiff,

v.

M. JOHNSON, et al.,

Defendants.

CASE NO. 1:05-CV-00086-OWW-LJO-P

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING PLAINTIFF'S MOTION  
FOR A PRELIMINARY INJUNCTION/TRO  
BE DENIED

(Doc. 34)

OBJECTIONS DUE WITHIN THIRTY DAYS

Plaintiff Bryan E. Ransom ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On August 9, 2007, plaintiff filed a motion seeking a preliminary injunction/temporary restraining order mandating that prison officials place him back on single cell status.

The purpose of a preliminary injunction is to preserve the status quo if the balance of equities so heavily favors the moving party that justice requires the court to intervene to secure the positions until the merits of the action are ultimately determined. University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). A preliminary injunction is available to a plaintiff who "demonstrates either (1) a combination of probable success and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardship tips in its favor." Arcamuzi v. Continental Air Lines, Inc., 819 F. 2d 935, 937 (9th Cir. 1987). Under either approach the plaintiff "must demonstrate a significant threat of irreparable injury." Id. Also, an injunction should not issue if the plaintiff "shows no chance of success on the merits." Id. At a bare minimum, the plaintiff "must

1 demonstrate a fair chance of success of the merits, or questions serious enough to require litigation.”

2 Id.

3 “[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold  
4 requirement imposed by Article III of the Constitution by alleging an actual case or controversy.”

5 City of Los Angeles v. Lyons, 461 U.S. 95, 101, 103 S.Ct. 1660, 1665 (1983) (citations omitted);

6 Jones v. City of Los Angeles, 444 F.3d 1118, 1126 (9th Cir. 2006). “Abstract injury is not enough.”

7 Lyons, 461 U.S. at 101, 103 S.Ct. at 1665. “[P]laintiff must show that he has sustained or is  
8 immediately in danger of sustaining some direct injury as the result of the challenged official conduct  
9 and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical.”

10 Id. (internal quotations and citations omitted). “The key issue is whether the plaintiff is ‘likely to  
11 suffer future injury.’” Jones, 444 F.3d at 1126 (quoting Lyons at 105, 1667). When a government  
12 agency is involved, it must “be granted ‘the widest latitude in the dispatch of its own internal  
13 affairs,’” Gomez v. Vernon, 255 F.3d 1118, 1128 (9th Cir. 2001) (quoting Rizzo v. Goode, 423 U.S.  
14 362, 378-79, 96 S.Ct. 598, 608 (1976)), and “[w]hen a state agency is involved, these considerations  
15 are, in anything, strengthened because of federalism concerns,” Gomez, 255 F.3d at 1128. “[A]ny  
16 injunctive relief awarded must avoid unnecessary disruption to the state agency’s ‘normal course of  
17 proceeding.’” Id. at 1128 (quoting O’Shea v. Littleton, 414 U.S. 488, 501, 94 S.Ct. 669, 679  
18 (1974)).

19 In addition, any award of equitable relief is governed by the Prison Litigation Reform Act,  
20 which provides in relevant part, “Prospective relief in any civil action with respect to prison  
21 conditions shall extend no further than necessary to correct the violation of the Federal right of a  
22 particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless  
23 the court finds that such relief is narrowly drawn, extends no further than necessary to correct the  
24 violation of the Federal right, and is the least intrusive means necessary to correct the violation of  
25 the Federal right.” 18 U.S.C. § 3626(a)(1)(A).

26 Equitable remedies are “unavailable absent a showing of irreparable injury, a requirement  
27 that cannot be met where there is no showing of any real or immediate threat that the plaintiff will  
28 be wronged again - a ‘likelihood of substantial and immediate irreparable injury.’” Lyons at 111,

1 1670 (quoting O’Shea, 414 U.S. at 502, 94 S.Ct. at 679). “[A] preliminary injunction is an  
 2 extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear*  
 3 *showing*, carries the burden of persuasion.” Mazurek v. Armstrong, 520 U.S. 968, 972 (1997)  
 4 (quotations and citations omitted) (emphasis in original).

5 Plaintiff alleges in his motion that in retaliation for pursuing this lawsuit, he has been  
 6 removed from single cell status and is now being double celled with general population prisoners  
 7 in the Security Housing Unit at California State Prison-Corcoran. This action was filed on January  
 8 21, 2005, and plaintiff’s claims arise from events which occurred prior to that date. This action does  
 9 not involve a claim of deliberate indifference to a substantial risk of harm to plaintiff based on  
 10 plaintiff’s recent removal from single cell status.<sup>1</sup> As a result, the court does not have jurisdiction  
 11 in this action to issue the order sought by plaintiff, assuming plaintiff is even entitled to the issuance  
 12 of such an order.

13 Because the claims in this action arise from the past conduct of defendants, the pendency of  
 14 this action does not confer upon the court a jurisdictional basis upon which to issue any orders  
 15 directing at remedying plaintiff’s current conditions of confinement. Accordingly, the court  
 16 HEREBY RECOMMENDS that plaintiff’s motion for preliminary injunctive relief, filed August 9,  
 17 2007, be DENIED.

18 These Findings and Recommendations will be submitted to the United States District Judge  
 19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**  
 20 **days** after being served with these Findings and Recommendations, plaintiff may file written  
 21 objections with the court. The document should be captioned “Objections to Magistrate Judge’s  
 22 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the

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 27 <sup>1</sup> Given that plaintiff filed this action on January 21, 2005, and is required to exhaust claims prior to filing  
 28 suit, any claims based on retaliation for filing this lawsuit or for failure to protect plaintiff by retaining him on single  
 cell status would have to be raised in a new action once the claims have been exhausted. 42 U.S.C. § 1997e(a);  
McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002).

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
2 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 **Dated: October 4, 2007**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE